



Get Ready!

Virginia Sales and Use Tax Changes

Question and Answer Summary

Webinar Broadcast June 7, 2013

Question and Answer Summary

House Bill 2313 Sales and Use Tax Provisions

Webinar

Broadcast Date: June 7, 2013

This summary was compiled from the questions received during the broadcast of the Get Ready! Virginia Sales and Use Tax Changes webinar on June 7, 2013, including those that were discussed on-air. In producing this summary, duplicate questions, unclear questions, and questions that did not contain enough facts for the Department of Taxation to provide a useful answer were omitted.

The responses are based solely on the information provided in the question, and may not be suitable for broad application. The responses are not official rulings of the Tax Commissioner and are not intended to be a substitute for the *House Bill 2313 Sales Tax Transition Guidelines*, revised June 13, 2013.

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Section 1: Background and Basic Information

House Bill 2313, enacted by the 2013 General Assembly, increases sales and use tax rates on July 1. There are two separate increases – one that affects the entire state, and a second one that affects only certain localities in Northern Virginia and Hampton Roads.

The statewide rate increase of 0.3 percent will raise the total tax rate from the current 5 percent to 5.3 percent. At the same time, an additional increase of 0.7 percent will take effect in the Northern Virginia and Hampton Roads regions, bringing the total tax rate to 6 percent in those areas. Similarly, vending machine tax rates will increase from 6 percent to 6.3 percent statewide, and to 7 percent in the Northern Virginia and Hampton Roads regions.

Sales of qualifying food for home consumption are not affected by either of these rate increases. Food sales will continue to be taxed at the current rate of 2.5 percent, even after July 1.

For details and examples, see the *House Bill 2313 Sales Tax Transition Guidelines*, revised June 13, 2013.

Legislation and Application of the New Provisions

1-1. Our POS System closes/batches out in the early morning on July 1, but those sales are for June. Will they still be under the old rate?

Yes. Because the sales were completed before July 1, the rate changes that become effective on July 1 would not apply to these transactions. **(HB2313 Va. Code §§ 58.1-603 and 58.1-604)***

1-2. We won't have someone on-site to update our systems until 8am on July 1. What do we do about the tax on sales that occur between midnight and 8am?

House Bill 2313 is effective July 1, 2013. Thus, the 0.3 percent increase in the General State Retail Sales and Use Tax and the additional increase of 0.7 percent in the Northern Virginia and Hampton Roads regions is effective at midnight, July 1, 2013. We recommend that you make arrangements to have your systems updated at midnight. If this is not possible, the Department has published sales tax bracket charts to assist taxpayers with computing the sales and use taxes manually. The charts are available on our website. If a business is unable to collect the sales and use tax at the correct rate, the business is still liable for payment of tax at the correct rate. **(HB2313 Va. Code §§ 58.1-603 and 58.1-604)***

1-3. Why isn't there a statewide rate of 6 percent?

House Bill 2313 provides for an additional rate increase only in localities that fall within a planning district that meets certain criteria with respect to vehicle volume and transportation usage. Currently, the Northern Virginia and Hampton Roads regions are the only districts that meet those criteria.

1-4. Is the new regional tax considered a component of state rate or separate regional rate (i.e., special purpose district)?

The regional tax is an additional State Retail Sales and Use Tax. It is collected on all sales for which the 4.3 percent (4 percent until July 1, 2013) State Retail Sales and Use Tax is collected if the sale is sourced to a locality in the Northern Virginia or Hampton Roads regions. **(HB2313 Va. Code §§ 58.1-603.1 and 58.1-604.01)***

1-5. Does the state apportion regional tax to the Northern Virginia and Hampton Roads regions as it does the local tax?

The regional tax will be distributed in accordance with the provisions of House Bill 2313. The regional tax collected in the Northern Virginia region will be deposited into the Northern Virginia Transportation Authority Fund while the Regional Tax collected in the Hampton Roads region will be deposited into the Hampton Roads Transportation Fund. **(HB2313 Va. Code § 58.1-638)***

1-6. What about nexus? If an out-of-state dealer with no physical presence makes a sale to a VA customer then there is no collection obligation. Did you just say that tax would need to be collected based on the ship to address? Are you assuming that the out-of-state dealer has nexus and is obligated to collect tax?

The discussions and examples with respect to out-of-state dealers assume that those dealers either have nexus in Virginia, or collect the tax as a courtesy to their Virginia customers.

1-7. I just wanted to confirm that there will not be a similar change in rate to the Communications Tax rate.

The provisions of House Bill 2313 do not apply to the Communications Sales Taxes.

1-8. If you've written an invoice to a customer before the tax change but then have to issue a credit after July 1, would you give them a 5 percent tax credit or 5.3 percent?

The credit should be issued for the amount paid. If the tax was collected at the 5 percent rate, that rate should be used for the credit. **(Va. Code § 58.1-625)**

1-9. If we issue a refund in July on a sale we made in June, can we issue the refund at the old rate, or must it be at the new rate?

The refund should be issued at the rate that was collected when the sale was made – in this case, 5 percent. **(Va. Code § 58.1-625)**

1-10. How does House Bill 2313 tie in with the Internet legislation that is pending in Congress?

HB 2313 conforms Virginia law to the requirements of proposed federal legislation that would grant states the authority to require remote sellers to collect the Retail Sales and Use Tax. In the event that any legislation is enacted by the Congress of the United States requiring states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit state and local taxes, HB 2313 authorizes the Tax Commissioner to take all administrative actions deemed necessary to facilitate the Commonwealth's compliance with any minimum simplification requirements set forth in the legislation. If federal legislation is enacted, the Department will release additional information and instructions. **(HB2313 Enactment Clause 7)***

1-11. What if you mistakenly charge the 5.3 percent rate instead of the 6 percent rate? How do you report the additional tax?

Even if you make an error in collecting the tax, you must report the sale and the associated tax liability at the correct rate; therefore, your return should reflect the correct tax liability. In the event that you report your liability incorrectly and our processing system detects the error, your return will be corrected automatically and the additional tax will be assessed. If an error is discovered after the return is filed, and we did not detect the error in processing, you should file an amended return to report the additional tax. (**Va. Code § 58.1-625**)

Affected Localities

1-12. How did you decide which localities to include in the Northern Virginia and Hampton Roads regions?

House Bill 2313 provides for the imposition of an additional state sales and use tax in cities and counties located in planning districts established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 of the Code of Virginia that meet specific criteria. The localities listed for Northern Virginia and Hampton Roads are the cities and counties that are members of the Northern Virginia and Hampton Roads Planning Districts. Tax Bulletin 13-8, issued June 13, 2013, notifies taxpayers that Gloucester County and Surry County have been removed from the list of affected localities in the Hampton Roads region. If additional planning districts meet the specific criteria in the future, the Department will notify all active, registered dealers. (**HB2313 Va. Code §§ 58.1-603.1 and 58.1-604.01; Guidelines Page 4**)*

1-13. How will we know the other areas that don't fall within the 6 percent rate? Will there be a list provided to show the different rate of 5.3 percent?

Any locality not specifically listed for the Northern Virginia and Hampton Roads regions falls under the provision for a combined tax rate of 5.3 percent. Tax Bulletin 13-8, issued June 13, 2013, notifies taxpayers that Gloucester County and Surry County have been removed from the list of affected localities in the Hampton Roads region. Complete locality listings for the state are included in the Sales and Use Tax return packages on our website.

1-14. Does the Regional Sales and Use Tax rate of .7 percent apply to Norfolk and Portsmouth?

Yes. The cities of Norfolk and Portsmouth are included in the Hampton Roads region. (**HB2313 Va. Code §§ 58.1-603.1 and 58.1-604.01**)*

Impact on Consumer's Use Tax

1-15. How are Consumer's Use Tax rates affected?

Consumer's use tax rates are subject to the increases in the same manner as the Retail Sales and Use Tax rates. Therefore, Forms ST-7 and CU-7 will reflect the 5.3 statewide rate, as well as the additional 0.7 percent rate in Hampton Roads and Northern Virginia localities, for purchases made on and after July 1, 2013. (**HB2313 Va. Code §§ 58.1-604 and 58.1-604.01**)*

1-16. I have a client who purchases lot of goods online, and he will not be charged sales tax. At what rate does he need to pay the consumer's use tax?

If your client is located in the Hampton Roads or Northern Virginia regions, the tax rate for purchases made on and after July 1, 2013 will be 6 percent. For all other localities, the rate will be 5.3 percent. For purchases of qualifying food items, the rate remains at 2.5 percent for all localities. (HB2313 Va. Code §§ 58.1-604 and 58.1-604.01; Guidelines Page 7-8)*

1-17. For consumers, what is the best site to view if they have any questions/concerns regarding the new tax rates - specifically to their locality that I can provide for them as an out-of-state Dealer?

Consumers should use the same web page as dealers. Consumers can access the page at [www..tax.virginia.gov/site.cfm?alias=changesandupdates](http://www.tax.virginia.gov/site.cfm?alias=changesandupdates).

Reference Materials and Resources

1-18. Is there a tool or resource to help small vendors easily determine the correct tax? We don't all have high-speed Internet.

For dealers who do not have quick access to our online resources while conducting business, we recommend printing out the Bracket Charts available on our website. You may also find it help to print out the locality listing sheet and Form ST-9R from the Form ST-9 package as a reference.

1-19. Are the slides from this webinar available for download?

Yes. Both the PowerPoint slides and a recording of the Get Ready! Webinar are available on our website.

1-20. Is there a listing of ZIP codes applicable to Northern Virginia and Hampton Roads? We would like to download this information into accounting software for the higher rates.

The Department of Taxation does not use ZIP codes for sourcing. Please see the discussion of FIPS codes, under Sourcing the Tax.

1-21. Will you be publishing new bracket charts?

Yes. A chart for sales of \$5 and less has been posted on our website, and a more complete chart will be posted there shortly.

Section 2: Sourcing the Tax

For details and examples, see the *House Bill 2313 Sales Tax Transition Guidelines*, revised June 13, 2013.

Sourcing, in General

- 2-1. Am I correct in hearing that the source is based on the storefront location so any sales made by salespersons in various regions are still reported to the locality where the storefront is?**

Yes. The sales are sourced to the seller's place of business. If the seller has multiple places of business; i.e., storefronts, the sales would be sourced to the respective locations. **(Va. Code § 58.1-605; Guidelines Pages 5-7)***

- 2-2. In general, a sale is said to occur where the merchandise title transfers to the customer. Therefore, if the sale originates at a 6 percent location, but is delivered (title transfers) to a customer in a 5.3 percent location, isn't the sales tax rate the 5.3 percent and not the 6 percent?**

As explained in the Guidelines for House Bill 2313, in-state sales are sourced to the seller's location. Accordingly, if a seller located in the Northern Virginia region or the Hampton Roads region makes a sale to customer outside that region, the tax will be charged at the rate applicable to the seller's location, which is 6 percent. If the situation were reversed, and the tax would be imposed at the rate of 5.3 percent. **(Va. Code § 58.1-605; Guidelines Pages 5-7)***

- 2-3. What happens if I accidentally charge the higher rate to customer outside the Northern Virginia or Hampton Roads regions?**

If you over-collect the tax, you should report the entire amount on your Sales and Use Tax return, and pay it with the return when filed. Alternatively, you can refund the difference to the customer. **(Va. Code § 58.1-625)**

- 2-4. My company is a large retailer, with headquarters outside Virginia, and with numerous locations within Virginia. Is there a combined factor that can be applied across localities to collect tax at the correct rate, or is every store considered a separate source for purposes of determining what rate to charge?**

There is no single tax rate or factor that can be applied across cities and counties located inside and outside the Northern Virginia and Hampton Roads regions. Therefore, each store must be considered a separate source in determining the correct tax rate for sales made at that location. **(Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 5-9)***

- 2-5. I sell my products (photographs) on an out-of-state website. The website facilitates the sale and sending of my product to individuals, then sends me a check. I will obviously pay taxes on what I receive, but do I have to go back and charge the sales tax to individuals who are in-state/out-of-state?**

As a seller located in Virginia, you are required to collect the tax on sales you make to Virginia customers, even though you make those sales through a website based outside Virginia. The tax should be collected at the rate that applies to your locality. **(Va. Code §§ 58.1-605, 58.1-606, and 58.1-612)***

FIPS Codes

2-6. What is a FIPS code?

Federal Information Processing Standards (FIPS) codes are used by the federal government to designate specific geographical areas, such as cities, counties and towns. Because each FIPS code is unique to a specific locality, the Department of Taxation has adopted FIPS codes as the standard for sourcing sales tax to Virginia localities.

2-7. Some states offer apps for assigning tax by ZIP codes. Why can't Virginia use ZIP codes, too?

There are many more ZIP codes than FIPS codes that apply to Virginia localities. At least 10 percent of ZIP codes fall across borders, and are shared by multiple counties, or between a city and a county. In contrast, each FIPS code is unique to a particular locality, which helps prevent errors in sourcing the tax.

2-8. Is there a listing of FIPS codes?

Yes. Complete listings of Virginia cities and counties, with their FIPS codes, are included in every Sales and Use Tax return package. We also offer the FIPS Code Lookup Tool on our website. The tool allows you to identify the correct FIPS code by entering an address.

2-9. It would be nice if the FIPS lookup tool would also show us what its corresponding tax rate is - can you add/include that?

Thanks for a great suggestion! We will look into this as we plan future enhancements to our online tools.

2-10. Is there an address lookup by FIPS?

No. Our FIPS Code Lookup Tool provides the correct FIPS code when an address is entered. There is no reverse lookup function.

Intrastate Transactions

2-11. If the seller is located in Charlottesville and the purchaser is in Hampton Roads, the sales tax rate is still 5.0 percent. Correct?

Assuming you are referring to sales of merchandise other than qualifying food items, the tax will be imposed at the rate applicable in the seller's locality, which will be 5.3 percent as of July 1, 2013. The tax rate on sales of qualifying food items will remain at 2.5 percent. (**Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 5-7**)*

2-12. As an in-state dealer, if my Richmond location makes a sale that is shipped into one of the regional zones, do we collect and remit the 0.7 percent regional tax? It used to be that we submitted all the jurisdiction tax (1 percent) to our home location (Richmond City in my example) regardless of where in Virginia our product was shipped.

For in-state transactions, the state tax is sourced in the same manner as the local tax, meaning that the tax is imposed at the rate applicable to the city or county where the seller is located. Therefore, your Richmond location should charge tax at the rate of 5.3

percent, regardless of the Virginia locality where the items are shipped. **(Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 5-7)***

2-13. What if an item is sold from a Richmond store for delivery to Williamsburg? What rate is charged?

The rate will be charged according to the seller's location – in this case, 5.3 percent, regardless of whether the item is being shipped into the Hampton Roads region. **(Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 5-7)***

2-14. I own a restaurant in Newsoms, Virginia. Will the new tax rate for food be 5.3 percent for the customers?

As Newsoms is located in Southampton County, which is included in the Hampton Roads region, you should charge the Retail Sales Tax at the rate of 6 percent, beginning July 1, 2013. As a restaurant, you are making sales of food for immediate consumption, which are subject to the rate increases imposed under House Bill 2313. Only qualifying sales of food for home consumption (grocery items, for example) are excluded from the rate increases. **(Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 2, 5-7)***

2-15. As a Virginia-based electronics distributor, we ship all over the state. Do we charge a higher sales tax rate when shipping to the Northern Virginia and Hampton Roads regions?

For in-state transactions, the tax is imposed at the rate that applies in the seller's locality. If you are making sales from outside the Hampton Roads and Northern Virginia regions, you will charge the tax at 5.3 percent, even if the customer's location or the delivery address falls within those regions. If you are located within one of those regions, you will charge tax at the rate of 6 percent. **(Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 5-7)***

2-16. If a dealer in Richmond neglects to charge sales tax on an item shipped to a customer in Williamsburg, what tax rate will the customer be required to pay?

In this instance, the point of taxable use would be Williamsburg, which is in the Hampton Roads region. The customer would report Consumer's Use Tax at the rate of 6 percent. **(Va. Code § 58.1-606; Guidelines Pages 7-8)***

2-17. If a retailer in Richmond buys inventory from a wholesaler located in the Northern Virginia region, then uses some of those items rather than reselling them, how will the items be reported on For ST-9? What is the correct rate?

Because the point of taxable use is Richmond, which is not in the Northern Virginia or Hampton Roads regions, the retailer will report the Use Tax on the items at the 5.3 percent rate. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

2-18. If a sale originates at one of our branches (Loudoun) but is shipped to the customer in Roanoke, does the Loudoun tax rate prevail, or the Roanoke tax rate?

Because the sale was made from a locality within the Northern Virginia region, you should use the 6 percent tax rate, even though the item is being shipped outside the region. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

- 2-19. If we purchase from Northern Virginia or Hampton Roads, we use their tax rates?**
Yes. The location of the seller determines the tax rate for in-state sales. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***
- 2-20. If I am a Fairfax County dealer selling something online to someone in a non-premium tax location, what rate do I charge?**
Because you are located in the Northern Virginia region, you will use the tax rate of 6 percent, regardless of the customer's locality. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***
- 2-21. We are a Virginia Dealer (Reseller) located in Prince William County. If we sell a product outside of the Northern Virginia or Hampton Roads regions, are we now REQUIRED to charge 6 percent because of where WE are located in ALL instances?**
Yes. Because you, the seller, are located in the Northern Virginia region, you are required to collect the tax at the rate of 6 percent, even if the item is shipped to a Virginia locality that falls under the 5.3 percent tax rate. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***
- 2-22. If my office is in Ashland and I furnish and install a computer to a customer in Newport News, then I only charge the 5.3 percent?**
Assuming that the sale took place at your business location and the installation is a follow-up to the sale, you would collect tax at the rate of 5.3 percent as the sale would not have originated in either the Hampton Roads or Northern Virginia regions. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***
- 2-23. We are a catalog/internet retailer. Our business office is located in Richmond and our orders are fulfilled from Martinsville. Would we charge the additional rate on sales shipped to customers in Northern Virginia and Hampton Roads, or would we just use the base rate for all sales that corresponds to our location?**
As the orders are actually taken at your Richmond location, you should collect tax at the rate of 5.3 percent, even for items that are shipped to locations in the Northern Virginia and Hampton Roads regions. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***
- 2-24. A dealer sells tools from his truck to various localities in Virginia, Washington, DC, and Maryland. He parks near job sites, and customers walk up to the truck to purchase tools. Would we use the physical address of each place he STOPS to determine the locality FIPS code?**
Yes. The dealer you described is a "non-fixed" dealer, meaning that his business does not have a physical location, or that a portion of his business is conducted in non-permanent locations. As sales are sourced to the dealer's location and the dealer is making sales from various localities, he needs to collect the tax at the rate imposed for each Virginia locality in which he makes sales. Any sales made in Maryland and Washington, DC would be subject to the sales tax requirements in those jurisdictions. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

- 2-25. If you have locations in Northern Virginia and the City of Richmond and the sale goes through the Richmond office, but all sales are ordered through the HQ (NOVA,) should we charge the additional tax?**

No. Since the sale actually took place in Richmond, the tax should be collected at the rate of 5.3 percent, even though the order will be filled in Northern Virginia. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

- 2-26. What happens if you are a dealer that drop ships sales to Northern Virginia? And how would we file?**

If you are an in-state dealer and the sale is made at a business location outside the Northern Virginia or Hampton Roads regions, you would collect the tax at the rate of 5.3 percent, even though the items will be shipped to the Northern Virginia region. If the sale is made from a business location within the Northern Virginia or Hampton Roads regions, you would collect the tax at the rate of 6 percent. If you are an out-of-state dealer subject to use tax, you would collect the tax according to the place of delivery, which would be 6 percent in this case. For details on how to file, see the Form ST-8 and Form ST-9 return packages available on our website. **(Va. Code § 58.1-606; Guidelines Pages 5-9)***

- 2-27. When a business owner in Hanover County sells off his truck to locations in Northern Virginia, does he use the physical address of the business where he stops his truck and sells to those who walk up to his truck?**

Yes. This dealer needs to collect the tax at the rate imposed for each Virginia locality in which he makes sales. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

- 2-28. If an order is placed by telephone call to our home office located in Shenandoah County, and then we ship the order from our storage facility located in Loudoun County, how much sales tax do we charge?**

Because the sale took place outside the Northern Virginia region, at your Shenandoah County location, you would collect the tax at the rate of 5.3 percent. The fact that the items are shipped from within the Northern Virginia region would not affect the tax rate. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

- 2-29. What is the rule when you deliver home heating fuel from a non-Hampton Roads area into Hampton roads area?**

Purchases for domestic consumption of heating fuels are exempt from the state portion of the Retail Sales and Use Tax and would continue to be exemption from the state 4.3 percent sales and use tax and the 0.7 percent regional tax. The local 1 percent sales and use tax continues to apply to all purchases for domestic consumption of heating fuels unless the locality adopts an ordinance specifically exempting such fuels. When a locality does not adopt such an ordinance, the 1 percent sales tax is allocated to the locality in which the taxable sale takes place. **(Va. Code §§ 58.1-605, 58.1-609.10, and 58.1-609.13)**

- 2-30. How would sales from a food truck that travels across FIPS codes be handled?**

A food truck is an example of a “non-fixed” dealer, meaning that the business does not have a permanent physical location. This dealer needs to collect the tax at the rate imposed for each Virginia locality in which sales are made. **(Va. Code § 58.1-606; Guidelines Pages 5-7)***

2-31. The point of sale is in Richmond City, and the order is shipped from the warehouse in Manassas City. What tax rate applies?

In this case, the sale took place outside the Northern Virginia region, at the Richmond City location. Therefore, you would collect the tax at the rate of 5.3 percent. The fact that the items are shipped from within the Northern Virginia region would not affect the tax rate. (**Va. Code § 58.1-606; Guidelines Pages 5-7**)*

2-32. If calls are coming into a call center but delivered from another location, which location is used to apply the sales tax rate?

Because the orders are taken at the call center, the tax rate that applies for the city or county in which the call center is located would be collected on the sales. The location from which the orders are shipped would not affect the tax rate. (**Va. Code § 58.1-606; Guidelines Pages 5-7**)*

2-33. An electrician from Fairfax (Northern Virginia region) travels to Fredericksburg and does repair work. What rate should be charged on parts?

Assuming the work order was placed at the Fairfax location, the sales would be sourced to the Fairfax location and the electrician would collect tax on the sale of the parts at the rate of 6 percent. (**Va. Code § 58.1-606; Guidelines Pages 5-7**)*

Interstate Transactions

2-34. For a business location in Manassas, Virginia shipping product to an out-of-state location, do I charge Virginia sales tax? Do I need to file an ST-8 form?

No Virginia tax would apply in this instance, because the item is being shipped out of Virginia. No out-of-state Use Tax would apply, so Form ST-8 would not be required. This transaction would be reported as an exempt sale on Form ST-9. (**Va. Code §§ 58.1-603 and 58.1-604**)

2-35. We are a construction company. Some of our materials are bought outside Virginia, and no sales tax is collected. We are located in Reston, Virginia. We are the one paying the use tax to Virginia. What tax rate are we going to use?

The correct tax rate will be determined by where the materials are used. For example, if the materials are used on a job site in the Northern Virginia or Hampton Roads regions, you will report the use tax at the rate of 6 percent. For use in all other regions of Virginia, the tax rate of 5.3 percent will apply. (**Va. Code §§ 58.1-605 and 58.1-606; Guidelines Pages 7-8**)*

2-36. We sell books and other items online through Amazon and other web sites. We are based in DC, but sell to people throughout VA (and other states). Do we need to assess proper sales tax based on the "ship to" address, or are Internet sales exempt from this?

In general, Internet sales are not automatically exempt from sales and use taxes. More information would be needed to determine if you are required to collect sales and use taxes in Virginia or in any other states in which you conduct business.

For example, you state that your business is “based” in DC. Do you have any business locations in Virginia, though? Regardless of where your business is based, if you have business locations from which sales originate (physical presence) in Virginia, then you

are required to collect and remit sales and use taxes for purchases originating at your Virginia business locations and for any tangible personal property purchased from your DC location and shipped to an address in Virginia, regardless of how the sale originated. That is, if a sale from your DC location originated via the Internet, the telephone, or the mail, and you have physical presence in Virginia, you are required to collect Virginia sales and use taxes on all sales made in Virginia and all sales that originate outside of Virginia that are shipped into Virginia. Your in-state Virginia sales will be sourced to your Virginia business location and your sales into Virginia from outside of Virginia will be sourced to the locality of destination.

If you have no physical presence in Virginia and all of your sales into Virginia originate from your business locations outside of Virginia, you may not have nexus with Virginia and may not be required to collect and remit Virginia sales and use taxes. However, your customers in Virginia are required to compute the tax on their purchases and remit the tax to the Commonwealth. **(Va. Code §§ 58.1-605, 58.1-606, and 58.1-612; Guidelines Pages 7-8)***

2-37. If a dealer in Northern Virginia accepts an order from a North Carolina customer, then fills the order and ships it to North Carolina from its Richmond warehouse, what tax rate will apply?

In this case, a Virginia-based dealer is transacting a sale with an out-of-state customer and delivering directly to that customer. Therefore, no Virginia sales tax would apply. **(Va. Code §§ 58.1-603 and 58.1-604)**

Section 3: Forms and Filing

Every forms package and online filing tool used for retail sales and use taxes will be revised to reflect the changes from House Bill 2313. The sample forms available on our website as of June 13, 2013 are identical to the final forms that will be published by July 31. Videos detailing the changes to our Business iFile format and to Business e-Forms will be posted on our website by mid-July.

For further information on changes to reporting, including changes to the dealer's discount, see the *House Bill 2313 Sales Tax Transition Guidelines*, revised June 13, 2013.

Changes to Returns

3-1. Will the Department of Taxation publish a new Form ST-9CO for consolidated filers?

We will publish a Form ST-9 package for consolidated filers that will contain all necessary schedules. In the meantime, you may refer to the Form ST-9 sample package on our website for information.

3-2. Will you have new sales tax worksheets?

Yes. Worksheets for all of the returns have been revised.

3-3. Are there any changes for Form ST-7?

Yes. Although only Forms ST-8 and ST-9 were reviewed in the webinar, corresponding changes have been made to Form ST-7, the Business Consumer's Use Tax Return.

Dealer's Discount

3-4. Will we get the discount back on the revised Form ST-9?

The dealer's discount is still limited to those filers whose monthly sales average less than \$20,000. The Department of Taxation monitors accounts and notifies dealers of any changes in status annually. If you were not eligible for the discount prior to July 1, 2013, you will not be able to claim a dealer's discount after that date, unless we notify you of a change in status. **(HB1500 Item § 3-5.08)***

3-5. Why is the additional regional tax not eligible for the dealer discount since it is a state level tax?

Code of Virginia §58.1-622 allows a discount on the first 3 percent of the state tax for dealers who meet certain criteria. As the current state tax rate is 4 percent, a portion of the state tax collected is already excluded from the discount. Accordingly, the increase of the state tax rate to 4.3 percent merely results in an additional amount being excluded from the discount computation. With respect to the additional increase of 0.7 percent in the Northern Virginia and Hampton Roads regions, the provisions of House Bill 2313 specifically prohibit the application of a dealer's discount to that portion of the tax. **(HB2313 Va. Code §§ 58.1-603.1 and 58.1-604.01)***

Changes to Online Filing Tools

3-6. Will Business iFile look very different for the July returns?

Yes. The Business iFile application has been revised. We will post a video on our website in mid-July to preview the changes.

3-7. Are the automated forms we fill out monthly going to be changed to automatically reflect the new tax calculation?

All of our online filing tools and forms for sales and use tax will be revised to reflect the changes resulting from House Bill 2313. In addition, we will post videos detailing the changes to Business iFile and e-Forms on our website in mid-July. See Question 3-9, below, for information on Web Upload.

3-8. With all the new changes will the Form ST-7 be available to file online?

Unfortunately, not at this time.

3-9. Will Web Upload formats be automatically updated or will taxpayers need to manually update them? When will updated Web Upload specifications be available to software vendors?

Formats will not automatically be updated for the users. Taxpayers will be required to create a new file layout and will need to modify their files to match the new layout. To obtain additional information, users can email webupload@tax.virginia.gov.

Filing Procedures

3-10. The rate increase goes into effect 7/1. Would this mean the new tax is due 8/20?

Yes. The first return reflecting the new rates will be the July return, due to be filed by August 20, 2013.

3-11. If we file our sales tax online, do we need to also fill out the ST-9 form?

No. You will continue to file online. Our online filing tools – Business iFile and Business e-Forms – will be revised. Watch for videos about the changes to be posted on our website in mid-July.

3-12. You can still have separate Virginia account numbers for multiple localities, correct? Then they would each file their own Form ST-9 and would not file Form ST-9B, right?

Yes. You may maintain separate account numbers for each locality and file as a “single-locality” filer in each of those cities or counties. As a single-locality filer, you would not complete Form ST-9B.

3-13. We are not a dealer but report sales tax on any purchases that are made from an out of state vendor. Do we use Form ST-7 for reporting and can the reporting still be done via paper?

You should continue to use Form ST-7 to report your Business Consumer’s Use Tax. Form ST-7 can only be submitted as a paper return.

- 3-14. If all sales fall into a single transportation region, why do you still need a breakdown between the localities in that region?**
The combined tax rate of 6 percent includes local tax of 1 percent. The local tax must be allocated to the proper city or county; therefore, a breakdown of sales by locality is need to ensure the correct allocation.
- 3-15. I am a consolidated filer. How do I complete a single return for multiple localities with different rates?**
As in the past, you will file a single return to report all of your sales. We have implemented a new schedule, Form ST-9R, to help you separate sales for the Northern Virginia and Hampton Roads regions. In addition, the tax rates are reported on separate lines on Form ST-9. Please review the sample forms on our website for details.
- 3-16. We have locations in two localities, Richmond and Hampton Roads, with sub-accounts. I file each separately. Do I have to file this ST-9R?**
If you file a separate return for each location, you would not need to complete Form ST-9R. If you are filing a single return for multiple locations in the Hampton Roads region and more than one locality is involved, you would need to complete Form ST-9R.
- 3-17. What about those who file the consumer use tax return for multiple locations?**
Businesses that file the Form ST-7 to report consumer's use tax will find that the form has been revised in the same manner as the Forms ST-8 and ST-9. Please review the sample forms package on our website for details.
- 3-18. Are companies currently filing Form ST-9B required to file online as well?**
Monthly filers were required to file electronically as of July 1, 2012. Quarterly filers will be required to file electronically beginning with the return for the period of July through September 2013. The use of Form ST-9B does not affect the filing requirement.
- 3-19. What about if you have two locations -- one in Northern Virginia and one outside of Northern Virginia (not in Hampton Roads)?**
If you are currently a single-locality filer for each location, you will continue to file Form ST-9 as you have in the past. If you are a consolidated filer, you will need to include the new Form ST-9R in your filing.
- 3-20. Is there anything I have to do to become a consolidated filer?**
You can use the Business iFile service on our website to change your filing status to consolidated, or call (804) 367-8037 for assistance.
- 3-21. Can you please explain why some localities require two sales tax filings instead of one Virginia form? For example. A client has two locations in Fredericksburg. Why does Virginia allow a locality to impose additional administrative filings?**
Sales tax filing requirements are imposed at the state level. Under our registration requirements, the client must register each business location separately and receive a Virginia account number for each one. However, taxpayers are not required to file each account separately, but may elect to submit a combined return for all of their business locations. To change to combined filing, your client should update their filing status using our Business iFile service, or call (804) 367-8037 for assistance.

Section 4: Transitional Rules, Contracts, and Leases

Special rules apply to transactions, such as contracts and leases, which are entered into before July 1, 2013, but are not completed until after that date. To fall under the transitional rules, a contract generally must have been entered into before April 3, 2013. For certain sales and leases, delivery must take place by September 30, 2013.

For details and examples, see the *House Bill 2313 Sales Tax Transition Guidelines*, revised June 13, 2013.

Contracts, in General

4-1. What sales tax applies for contracts entered into prior to July 1, but completed fully or partially, after July 1 and then billed?

Tangible personal property purchased and delivered on or after July 1, 2013, are subject to the higher rate (5.3% or 6% if in the Hampton Roads and Northern Virginia regions). However, the law allows for refunds of the tax increases remitted on tangible personal property purchased under *bona fide* real estate and highway construction contracts, sale contracts, and leases entered into before April 3, 2013. The tangible personal property must be delivered on or before September 30, 2013, unless the property is purchased pursuant to a construction contract containing a specific and stated date of completion. Refunds of the additional tax will be available for all property pursuant to such contracts that is delivered to the contractor on or before the completion date specified in the contract. **(HB2313 Va. Code § 58.1-639; Guidelines Pages 9-10)***

4-2. Fixed-Price Contracts - If the contract/bid is in place PRIOR to July 1st, are change orders taxed at the original rate OR at the new rate?

If a contract is renegotiated after April 3, 2013, the contract would not qualify for the refund provision. Any tangible personal property purchased on or after July 1, 2013, would be subject to the higher rate (5.3% or 6% if in the Hampton Roads and Northern Virginia regions). **(HB2313 Va. Code § 58.1-639; Guidelines Page 11)***

4-3. Am I correct in understanding that contracts currently in place prior to 4/4/2013 are grandfathered at the current rate of 5 percent until the contract ends?

The law allows for refunds of the tax increases remitted on tangible personal property purchased under *bona fide* real estate and highway construction contracts, sales contracts, and leases entered into before April 3, 2013. However, the tangible personal property must be delivered on or before September 30, 2013, unless the property is purchased pursuant to a construction contract containing a specific and stated date of completion. Refunds of the additional tax will be available for all property pursuant to such contracts that is delivered to the contractor on or before the completion date specified in the contract. **(HB2313 Va. Code § 58.1-639; Guidelines Page 11)***

4-4. What sales tax rate do you collect if you receive a deposit on an item in June for a manufacturer item that will be delivered in July

Unless the item was purchased under a *bona fide* real estate and highway construction contract, sales contract, or lease entered into before April 3, 2013, the item is subject to the increased rate if it is delivered and paid for in full after July 1, 2013. **(HB2313 Va. Code § 58.1-639; Guidelines Pages 9-10)***

Construction Contracts

4-6. Should contractors who work on job sites all over the state tax materials provided based on the locality of the job site?

Purchases of goods upon which the Retail Sales and Use Tax has not been paid are subject to the use tax and sourced to the city or county where the goods are used or consumed by the purchaser, or stored for use or consumption. Contractors owing the use tax on goods used or consumed on a job site should source the tax to the locality of the job site. **(Va. Code §§ 58.1-604 and 58.1-606; Guidelines Pages 7-8)***

4-7. Are ongoing projects by general contractors subject to new tax rate or the prior rate?

The law allows for refunds of the tax increases remitted on tangible personal property purchased under *bona fide* real estate and highway construction contracts, sales contracts, and leases entered into before April 3, 2013. However, the tangible personal property must be delivered on or before September 30, 2013, unless the property is purchased pursuant to a construction contract containing a specific and stated date of completion. Refunds of the additional tax will be available for all property pursuant to such contracts that is delivered to the contractor on or before the completion date specified in the contract. **(HB2313 Va. Code § 58.1-639; Guidelines Page 11)***

4-8. Am I correct that contractor with contracts currently in place still pay the higher tax rate on these jobs but must file for the refund of the additional taxes paid until completion of the contracted job? If so, what form is this filed on and when do these refund filings have to be requested (i.e., within a month, year, 2 years of payment?)

The sales tax increase paid on purchases or leases of tangible personal property under *bona fide* real estate construction contracts, sales contracts, or leases may be eligible for a refund if in place prior to April 3, 2013. The purchaser or lessee of tangible personal property under qualifying contracts or leases should write in and request refunds of the additional tax directly from the Department:

Virginia Department of Taxation
Office of Customer Services
P.O. Box 1115
Richmond, VA 23218-1115

While there is no specific form, the purchaser or lessee must furnish the Department with copies of the contract or lease, copies of invoices for the purchases, and indicate the delivery date of all items for which refunds are claimed. As with refund requests

generally, the request must be made within 3 years of the date the tax became due. (**Va. Code § 58.1-1823; HB2313 Va. Code § 58.1-639; Guidelines Page 10**)*

- 4-9. My main concern is in reference to whether or not we will be in compliance. As a construction company we have several long term jobs/contracts with customers. We want to know if the eligibility of our refund is based on our completion date with the customer/contract as of 4/3 or with individual purchase orders with vendors.**

The date controlling the eligibility for a refund of the sales tax increases for a purchase of tangible personal property is the completion date of the contract between a contractor and its customer and not the completion date of the contracts between the contractor and its vendors. (**HB2313 Va. Code § 58.1-639; Guidelines Page 12**)*

- 4-10. Often in construction contracting, invoices are received and paid up to 6 months after the contracted completion date depending on the volume of purchases that continue to occur at the end of the job. On these jobs, Can companies also request the additional taxes paid on these purchases to be refunded if these jobs were contracted/entered into prior to 4/3/2013?**

Companies may claim a refund for purchases pursuant to *bona fide* real estate and highway construction contracts entered into prior to April 3, 2013, if the tangible personal property is delivered prior to the completion date, even if the purchase is invoiced after the completion date. (**HB2313 Va. Code § 58.1-639; Guidelines Page 11**)*

- 4-11. I work for a concrete company. On projects that have started or will start but a contract was done prior to this increase on 7/1 our customer must pay the new tax rate and then apply for the refund. Meaning no exemptions from the increase will be offered. Is this correct?**

There are no specific exemptions for the tax increases imposed effective July 1, 2013. Transactions that are currently exempt from the Retail Sales and Use Tax would also be exempt from the tax increases. Taxable purchases of tangible personal property after July 1, 2013, are subject to the higher tax rate. (**HB2313 Va. Code §§ 58.1-603 and 58.1-604; Guidelines Pages 9-10**)*

Maintenance Contracts

- 4-12. How will this affect the tax on optional maintenance contracts?**

Maintenance contracts are not eligible for refunds of the additional tax. Current Virginia law provides that the sale of maintenance contracts that provide for both parts and labor, are subject to tax upon one-half of the total charge for such contracts. All taxable maintenance contracts entered into before July 1, 2013, are subject to the tax at a rate of 2.5 percent, while those taxable maintenance contracts entered into on or after July 1, 2013, are subject to the tax at a rate of 2.65 percent (3.0 percent in the Northern Virginia and Hampton Roads Regions). (**Va. Code § 58.1-609.5; Guidelines Page 14**)*

Sales Contracts

4-13. Does a layaway count as a contract for the transitional rules?

Yes, refunds of the additional tax may be received for layaways made before April 3, 2013 and delivered to the purchaser on or before September 30, 2013. **(HB2313 Va. Code § 58.1-639; Guidelines Page 13)***

4-14. A customer special orders furniture in June takes 6 to 8 weeks to make. Delivery is made after July 1st. What rate does the dealer charge the customer?

Tangible personal property purchased and delivered on or after July 1, 2013, are subject to the higher rate (5.3% or 6% if in the Hampton Roads and Northern Virginia regions). As no sales contract was entered into prior to April 3, 2013, the transaction would not be eligible for the refund provision. However, the increased rate does not apply to tangible personal property paid for in full prior to July 1, 2013. **(HB2313 Va. Code § 58.1-639; Guidelines Pages 9-10, 13)***

4-15. If the sale is in process and ordered before July 1st but the material is delivered after July 1st, what rate applies

Tangible personal property purchased and delivered on or after July 1, 2013, are subject to the higher rate (5.3% or 6% if in the Hampton Roads and Northern Virginia regions). The increased rate will not apply to property delivered prior to July 1, 2013, but paid for on or after July 1, 2013. Also, the increased rate does not apply to tangible personal property paid for in full prior to July 1, 2013. **(Guidelines Pages 9-10)***

Leases

4-16. I am working with a leasing company. Do these rate changes take effect for leases already in place? Or would the rates in effect at the time the lease was signed be used?

Leases of tangible personal property would be subject to the higher rate (5.3% or 6% if in the Hampton Roads and Northern Virginia regions) effective July 1, 2013. However, refunds of the additional tax paid on leases of tangible personal property on and after July 1, 2013, will be available over the course of the lease, provided that (i) the lease or rental is entered into before April 3, 2013, and (ii) the leased property is delivered to the lessee by September 30, 2013. **(HB2313 Va. Code § 58.1-639; Guidelines Pages 14)***

* Cites:

2013 House Bill 1500 (*Acts of Assembly* 2013, Chapter 806)

2013 House Bill 2313 (*Acts of Assembly* 2013, Chapter 766)

Revised Guidelines for the Retail Sales and Use Tax Changes Enacted in the 2013 General Assembly Session, Public Document 13-103 (June 13, 2013)